

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
DEAN C. PLASKETT,)	
MARC A. BIGGS, and)	Criminal No. 2007-60
LEROY L. MARCHENA,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Armando Bonilla, Esq.

Washington, D.C.

For the government,

Gordon C Rhea, Esq.

Mount Pleasant, SC

For defendant Dean C. Plaskett,

Treston E. Moore, Esq.

St. Thomas, U.S.V.I.

For defendant Marc. A. Biggs,

Adriane J. Dudley, Esq.

St. Thomas, U.S.V.I.

For defendant Leroy L. Marchena.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of Marc. A Biggs ("Biggs") to exclude the testimony of Edmond J. Blaize ("Blaize"), a local contractor, regarding Biggs' alleged refusal to release approximately \$100,000 owed to Blaize by the Virgin Islands

Department of Property and Procurement ("DP&P"), unless Blaize paid Biggs a kickback of approximately \$30,000. Biggs argues that the introduction of such evidence would violate Federal Rule of Evidence 404(b) ("Rule 404(b)").

I. FACTS

On November 8, 2007, the grand jury returned an indictment against the Defendants. Count One charges Plaskett and Biggs with conspiracy to commit federal program bribery and mail fraud. Counts Two through Four charge that Plaskett committed federal program bribery. Counts Five through Seven charge Biggs with federal program bribery. Count Eight charges Plaskett and Marchena with conspiracy to obstruct justice. Counts Nine and Ten charge that Plaskett and Marchena obstructed justice. Count Eleven charges Plaskett with making fraudulent claims upon the government of the Virgin Islands. Count Twelve charges Biggs with making fraudulent claims upon the government of the Virgin Islands.

On February 4, 2008, the government provided notice of its intent to introduce evidence of Biggs's demand for a kickback from Blaize pursuant to Rule 404(b).

II. DISCUSSION

Rule 404(b) proscribes the admission of evidence of other crimes when offered to prove bad character. See Fed. R. Evid. 404(b) (2006). Under Rule 404(b),

[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Id. "Rule 404(b) is a rule of inclusion rather than exclusion."

United States v. Kellogg 510 F.3d 188, 197 (3d Cir. 2007).

To be admissible under Rule 404(b), evidence of other crimes must:

(1) have a proper evidentiary purpose, (2) be relevant under Rule 402, (3) satisfy Rule 403 (i.e., not be substantially more prejudicial than probative), and (4) be accompanied by a limiting instruction, when requested pursuant to Federal Rule of Evidence 105, that instructs the jury not to use the evidence for an improper purpose.

United States v. Kemp, 500 F.3d 257, 296 (3d Cir. 2007); see also *Huddleston v. United States*, 485 U.S. 681, 691-92, 108 S.Ct. 1496, 1502, 99 L.Ed.2d 771 (1988) (explaining that the above four factors protect against unfair prejudice to the defendant by the admission of other crimes evidence).

III. ANALYSIS

A. Notice Requirement of Rule 404(b)

Biggs argues that the government's February 4, 2008, notice of intent to offer evidence regarding Biggs' alleged request for kickbacks from Blaize failed to satisfy the notice requirements of Rule 404(b).

The pretrial notice required by Rule 404(b) "is intended to reduce surprise and promote early resolution on the issue of admissibility." The notice provision is extremely generalized with respect to the time limits for filing pretrial notice. See Fed. R. Evid. 404(b) advisory committee's note to 1991 amendments. Rule 404(b) contemplates that "counsel for both the defense and the prosecution will submit the necessary request and information in a reasonable and timely fashion." *Id.* Although the rule requires that notice of other crimes be given before trial, "no specific time limits are stated." *Id.* Rather, the reasonableness of the timing of a request or disclosure under Rule 404(b) depends on the facts of each case. See *id.* "Likewise, no specific form of notice is required." *Id.* The generalized notice provision simply "requires the prosecution to apprise the defense of the general nature of the evidence of extrinsic acts." *Id.* Rule 404(b) does not require the government to disclose the names and addresses of witnesses. See *id.*

"The notice requirement is a prerequisite to admissibility of the Rule 404(b) evidence." *United States v. Long*, 814 F. Supp. 72, 73 (D. Kan. 1993). Consequently, "the offered evidence is inadmissible if the court determines that the notice requirement has not been met." *Id.* "The court has the discretion to determine whether a particular notice is not reasonable due to incompleteness." *Id.*

Here, the government notified Biggs of its intent to offer Rule 404(b) evidence on February 4, 2008, approximately one week before the trial date scheduled for this matter. The timing of the government's notice of its intent to present evidence of other crimes relating to Biggs was reasonable.

As to the completeness of the government's notice of Rule 404(b) evidence, the February 4, 2008, letter provided:

[a]t some point in or after January, 1999, and before in or about December, 2002, . . . Biggs, then DP&P Commissioner, attempted to extort a bribe/kickback in the approximate amount of \$30,000 from Edmond J. Blaize of [CPC] in exchange for releasing a \$100,000 progress payment owed CPC in connection with a Department of Education architectural project.

(Gov't Mot. *In Limine* 4, Feb. 6, 2008.) The February 4, 2008, notice disclosed to Biggs that the "general nature" of the evidence involved an attempted bribe or extortion of Blaize by Biggs. As such, the government's notice of intent to offer other crimes evidence related to Biggs satisfied the general requirements of Rule 404(b). *See, e.g., United States v. Bledsoe* 2006 WL 3098770 at *4 (W.D. Pa. 2006) (holding that the government's notice of Rule 404(b) evidence was sufficient because "[R]ule [404(b)] requires only the disclosure of the general nature of the evidence the government intends to introduce. A demand for specific evidentiary detail, such as dates, times, places and persons involved is overly broad."); *United States v. Van Pelt*, 1992 WL 371640 at *14 (D. Kan. 1992)

(concluding that the government provided "fairly detailed descriptions" of the evidence, thereby satisfying the notice requirement of Rule 404(b)); *cf. United States v. Long*, 814 F. Supp. 72 (D. Kan. 1993) (holding that the government's notice of its intent to use other crimes evidence was insufficient because, although the notice named witness who would testify against the defendant, it did not describe nature of conduct government intended to introduce through witness).

B. Proper Evidentiary Purpose

Biggs further contends that Blaize's testimony regarding Biggs' kickback demand is sought to be admitted for improper purposes.

Rule 404(b) permits evidence of other crimes to be admitted for purposes of proving "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" Fed. R. Evid. 404(b); *see also Huddleston*, 485 U.S. at 691-92; *cf. Gov't of the Virgin Islands v. Pinney*, 967 F.2d 912, 914 (3d Cir. 1992) (explaining that Rule 404(b) prohibits the admission of other crimes evidence for the purpose of showing that an individual has a propensity or disposition to act in a particular manner). "If the purpose of the evidence is to show that the conduct charged was not performed inadvertently, accidentally, or without guilty knowledge and intent (that is, for one of the specific permissible uses outlined in Rule

404(b)), it is admissible." *Ansell v. Green Acres Contracting Co., Inc.*, 347 F.3d 515, 520 (3d Cir. 2003).

Here, the government intends to present evidence that Biggs personally refused to pay Blaize money legally due to Blaize's company unless Blaize gave Biggs a 30% kickback on the amount owed. That evidence, if proven, could demonstrate knowledge, intent, or a lack of mistake with respect to Biggs' involvement in the criminal conduct.

Accordingly, it is hereby

ORDERED that Biggs' motion is **DENIED**.

DATED: February 12, 2008

S_____
CURTIS V. GÓMEZ
Chief Judge

Copy:

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